

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JESSE A MARTINEZ

Claimant

APPEAL NO: 11A-UI-01597-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BELLE/SIOUX CITY RIVERBOAT

Employer

OC: 01/02/11

Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit
871 IAC 24.26(21) – Quit or be Fired

STATEMENT OF THE CASE:

The employer appealed a department decision dated January 28, 2011, reference 01, that held the claimant was forced to resign or be discharged on November 2, 2010, and benefits are allowed. A telephone hearing was held on March 21, 2010. The claimant participated. Barb Holsinger, HR Director, and Karen Johnson, HR Employment Specialist, participated for the employer.

ISSUE:

Whether the claimant voluntarily quit with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the claimant, and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time food and beverage supervisor from July 19, 2005 to November 3, 2010. The employer offered employees a free coupon to attend a Haunted House on October 27, and it rented a local bar for food and beverages after the event. Claimant while under the influence, kissed, hugged and touched the breasts of a female subordinate employee while at the bar.

The employer confronted claimant about violating its code of conduct and harassment policy. Claimant stated he was too drunk to remember what he did. The employer concluded it would terminate the claimant, but it gave him the opportunity to resign, because it would look better on his résumé.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The administrative law judge concludes that the claimant was not discharged for misconduct in connection with from employment on November 3, 2010. Although employer concluded it would terminate claimant, it did not do so.

An employer offer to resign or be terminated is not considered a voluntarily leaving when accepted by the employee. The resignation is a voluntary quit with good cause.

DECISION:

The department decision dated January 28, 2011, reference 01, is affirmed. The claimant voluntarily quit with good cause attributable to the employer on November 3, 2010 when he was forced to resign. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css